

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 30, 2004

GSBCA 16305-RELO

In the Matter of AMOS F. JONES, JR.

Amos F. Jones, Jr., San Antonio, TX, Claimant.

Captain Etienne J. Miszczak, Chief, Adverse Actions, Office of the Staff Judge Advocate, 12th Flying Training Wing, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

HYATT, Board Judge.

Real estate transaction expenses are not allowable when incurred in the sale of a residence that was not the residence from which an employee transferring in the interest of the Government regularly commuted to and from his previous duty station.

Background

In January 2003, claimant, Amos F. Jones, Jr., a civilian employee of the Air Force, accepted a permanent change of station from Nellis Air Force Base, Nevada, to Randolph Air Force Base, Texas. At the time he was offered the transfer, claimant was employed at Nellis Air Force Base under a term appointment. Before that he had worked for the Air Force in Riverside, California, and owned a home near there in Perris, California. The Air Force did not pay claimant's moving expenses to Nellis Air Force Base when he accepted the term appointment. As a result, Mr. Jones did not relocate his family to Nevada, but instead maintained his house in Perris, located some 250 miles from Nellis Air Force Base, and continued to look for a permanent position at March Air Reserve Base in California near his home. Mr. Jones rented an apartment in Las Vegas, near the base, from which he ordinarily commuted to and from work during the week. Mr. Jones states that he also commuted to the base from California on a weekly, and sometimes daily, basis, and that he made the commute for scheduled medical appointments.

When he was offered a permanent position at Randolph Air Force Base, Mr. Jones informed the Air Force that he could only accept the transfer if his moving costs from California to Texas were paid. He states that he discussed this matter with personnel at Randolph Air Force Base, explaining that, in particular, he needed to be reimbursed the expenses associated with the sale of his home in California. Apparently, he was led to

believe that these would be payable and, in reliance on this understanding, he accepted the transfer and moved to Texas. The Air Force issued travel orders authorizing payment of various expenses, including real estate transaction costs, temporary quarters subsistence expenses, and transportation of household goods.

Mr. Jones sold the house in California in March 2003 and submitted a voucher for the costs incurred in the sale. He was subsequently informed that the costs were not allowable because the house was not his primary residence as defined by the applicable regulations. That is, because claimant was not regularly commuting to Nellis Air Force Base from his home in California on a daily basis, the expenses could not be reimbursed. Mr. Jones, noting that this has caused serious financial hardship for his family and that he was misled by the agency, has asked the Board to review this decision.

Discussion

By statute, agencies are to reimburse employees for real estate expenses incurred in the sale of a residence at the old official station incident to a transfer in the interest of the Government. 5 U.S.C. § 5724a(d) (2000). Under the Federal Travel Regulation (FTR), which implements this statutory provision, to qualify for reimbursement, this must be the "residence from which [the employee] regularly commute[d] to and from work on a daily basis and which was [the employee's] residence at the time [he or she was] officially notified by competent authority to transfer to a new official station." 41 CFR 302-11.100 (2002) (FTR 302-11.100). The pertinent provisions of the Joint Travel Regulations (JTR), applicable to relocation expenses incurred by civilian Defense Department employees, are similar. JTR C14000.

Although Mr. Jones commuted weekly, and occasionally daily, from his home in California, it is clear that the bulk of Mr. Jones' daily commutes were made from the apartment in Las Vegas to Nellis. The regulations do not permit the Government to reimburse employees for the sale of a home from which the employee was not actually commuting regularly on a daily basis. Under the facts here, then, Mr. Jones plainly does not qualify for this benefit. William T. Orders, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389; accord Wayne A. Wetzel, GSBCA 16017-RELO, 03-1 BCA ¶ 32,224; Mitchell J. Schutz, GSBCA 15521-RELO, 01-2 BCA ¶ 31,461; Herman E. Harke, GSBCA 15282-RELO, 00-2 BCA ¶ 31,017; David Morrell, GSBCA 15229-RELO, 00-1 BCA ¶ 30,899.

Mr. Jones argues that special consideration should be given to his claim because he relied to his detriment on the advice of agency employees and the denial of his claim has led to financial hardship. Although it is regrettable that Mr. Jones was given erroneous advice concerning his eligibility for this benefit in conjunction with his transfer to Kelly Air Force Base, the agency nonetheless lacks the authority to pay these expenses. Orders; Albert R. Wilcox, GSBCA 15776-RELO, 02-2 BCA ¶ 31,864. The statute and implementing regulations simply preclude payment of these expenses, even in those situations where both the employee and his agency advisors mistakenly believed the costs could be reimbursed.

The claim is denied.

CATHERINE B. HYATT
Board Judge